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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,052	02/06/2001	Thomas Steinhausler	785989-00062 (8A04-BD-1-1)	6217

7590

11/27/2002

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EXAMINER

WYROZEBSKI LEE, KATARZYNA I

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 11/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/778,052

Applicant(s)

STEINHAUSLER ET AL.

Examiner

Katarzyna W. Lee

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2002 and 17 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

In view of applicant's amendment mailed on August 20, 2002 and supplemental amendment filed on September 17, 2002 following office action has been necessitated.

***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-3, 6, 8-14, 17 and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Heel (US 5,094,797).

The discussion of the rejection of the prior art of Heel from paragraph 3 of the previous office action mailed on 5/22/2002 is incorporated here by reference.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 4, 5, 15, 16, 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heel (US 5,094,797).

The discussion of the disclosure of the prior art of Heel from paragraph 7 of the previous office action mailed on 5/22/2002 is incorporated here by reference.

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5. Claims 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heel (US 5,094,797) as applied to claims 1-6, 8-17 and 19-24 above, and further in view of Brannon (US 5,433,775).

The discussion of the disclosure of the prior art of Heel from paragraph 7 and that of Brannon from paragraph 8 of the previous office action mailed on 5/22/2002 is incorporated here by reference.

In the amendment filed on August 20, 2002 and supplemental amendment filed on September 17, 2002 the applicant has argued following:

a) The prior art of Heel does not teach use of non-aromatic thermoplastic polymers and that there is no distinction between using aromatic and non-aromatic thermoplastics.

With respect to the paragraph from col. 2, which applicant has cited to rebut examiner's position, it is evident, that the prior art of Heel discloses four polymers and renders others as possible thermoplastics. For the purpose of 102 rejection, the possible polymers are not relied on, but only those specifically recited. From the polymers specifically recited PMMA, PVA and VAc are not aromatic. Only polystyrene is. Therefore the use of non-aromatic thermoplastics is anticipated.

b) The prior art of Heel fails to teach weatherable molding composition.

With respect to the above argument, a property is something intrinsic or inherent to compounds and thereby to the composition comprising compounds of interest. If the

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composition of Heel requires unsaturated polyester, monomer reactive with said polyester, thermoplastic polymer and pigment, then in view of four polymers listed in the specification, then 3 out of 4 it will contain the same components as those of claim 1 of the present invention. Weatherability is therefore regarded as a property of the molding composition resulting from the particular composition.

c) Without knowledge or recognition of their problem, the references cited by the examiner cannot be properly asserted under the concept of obviousness. There must be at least suggestion of applicant's problem.

In response to applicant's argument that the examiner's conclusion of obviousness is improper, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

d) Essential features of the present invention are not disclosed in the prior art of Heel.

As it was discussed above the prior art of Heel does teach the composition and weatherability is an inherent or intrinsic property of the composition.

e) Molding composition achieving weatherability is not taught by Heel.

Please see the arguments above.

f) Using aluminum hydrate of Brannon with the composition of Heel does not lead to the present invention and therefore it is not rendered obvious

With respect to the above argument, property of alumina hydrate, which is serving in capacity of pigment, is also inherent. It is well settled that it is *prima facie* obvious to combine two ingredients, each of which is targeted by the prior art to be useful for the same purpose. *In re Linder* 457 F,2d 506,509, 173 USPQ 356, 359 (CCPA 1972).

g) The alumina hydrate of the present invention is not utilized as a filler.

Selection of a known material based on its suitability for its intended use supports *prima facie* obviousness. *Sinclair & Carroll Co vs. Interchemical Corp.* 325 U.S. 327, 65 USPQ 297 (1945). Alumina hydrate therefore can be utilized as pigment, since it is its intrinsic property.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katarzyna W. Lee whose telephone number is (703) 306-5875. The examiner can normally be reached on Mon-Thurs 6:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

KIWL  
November 18, 2002

EDWARD J. CAIN  
PRIMARY EXAMINER  
GROUP 1500

